

filed in the circuit court.

¶ 5 Thereafter, the State filed a motion to dismiss the defendant's motion as untimely. The circuit court entered an order granting the motion to dismiss. The court held that the defendant's motion was untimely and that it failed to state a basis for the withdrawal of the guilty plea. The defendant filed this timely appeal.

¶ 6 ANALYSIS

¶ 7 The sole issue on appeal is whether the defendant's motion to withdraw his guilty plea was timely filed. Illinois Supreme Court Rule 604(d) (eff. July 1, 2006) provides as follows: "No appeal shall be taken upon a negotiated plea of guilty challenging the sentence as excessive unless the defendant, within 30 days of the imposition of sentence, files a motion to withdraw the plea of guilty and vacate the judgment." The Illinois legislature has explained the computation of time as follows:

"The time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is Saturday or Sunday or is a holiday as defined or fixed in any statute now or hereafter in force in this State, and then it shall also be excluded. If the day succeeding such Saturday, Sunday or holiday is also a holiday or a Saturday or Sunday then such succeeding day shall also be excluded." 5 ILCS 70/1.11 (West 2008).

¶ 8 Furthermore, the Illinois Supreme Court held that notices of appeal that are mailed within the 30-day required time period but filed with the clerk later are still deemed timely filed. *Harrisburg-Raleigh Airport Authority v. Department of Revenue*, 126 Ill. 2d 326, 340 (1989). Illinois reviewing courts have extended this rule to motions to withdraw guilty pleas as well. *People v. Pagel*, 197 Ill. App. 3d 305, 307 (1990); *People v. Tlatenchi*, 391 Ill. App. 3d 705 (2009). Moreover, a prisoner's motion to withdraw a guilty plea is considered timely filed if the date on the proof of service is within the 30-day period, regardless of the

date on which the motion is postmarked or file-stamped. *Pagel*, 197 Ill. App. 3d at 307.

¶ 9 Here, the defendant was sentenced on April 30, 2010. The defendant's motion was file-stamped on June 3, 2010, but the attached sworn proof of service was signed and dated on June 1, 2010.

¶ 10 The defendant's 30-day deadline would have been Sunday, May 30, 2010. However, according to the legislature's computation rules, the defendant's last day to file was Tuesday, June 1, 2010, because the last day fell on a Sunday and the succeeding day was a holiday, Memorial Day.

¶ 11 Therefore, we conclude that the defendant's motion was timely since the proof of service was signed stating that the defendant placed the motion in the institutional mail on June 1, 2010, which was before the expiration of the defendant's 30-day time for filing.

¶ 12 **CONCLUSION**

¶ 13 For the foregoing reasons, we reverse the circuit court's order dismissing the defendant's motion to withdraw his guilty plea as untimely and remand the cause for further proceedings.

¶ 14 Reversed; cause remanded.